

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-43489

RONALD J. BERRY,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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**ORDER DENYING, WITHOUT PREJUDICE, DEBTOR'S MOTION TO  
AVOID JUDICIAL LIEN AND AVOID PREFERENTIAL TRANSFER**

This case is before the Court on "Debtor's Motion to Avoid Judicial Lien and Avoid Preferential Transfer," filed on February 10, 2009 (Docket # 8, the "Motion"). The Motion seeks (1) avoidance of a creditor's judicial lien under 11 U.S.C. § 522(f)(1)(A) (Motion at ¶ 4), and (2) avoidance of the judicial lien as a preference under 11 U.S.C. §§ 522(h) 547 (Motion at ¶ 6). On March 27, 2009, Debtor filed a Certification of Non-Response indicating that no one had filed an objection to the Motion. The Court nonetheless must deny the Motion, without prejudice, for the following reasons.

First, to the extent the Motion seeks avoidance of the lien based on § 522(f)(1)(A), the avoidance can be sought by motion rather than by adversary proceeding, *see* Fed.R.Bank.P. 7001(2) and 4003(d), but the Motion fails to demonstrate the extent, if any, to which the judgment lien impairs the Debtor's exemption under the formula of § 522(f)(2)(A).

Second, to the extent the Motion seeks avoidance based on the combination of §§ 547 and 522(h), then (a) the Motion fails to demonstrate that it meets all of the requirements of those sections; and (b) such avoidance must be sought by an adversary proceeding, not by a motion. *See* Fed.R.Bankr.P. 7001(2); Advisory Committee Notes to Fed.R.Bankr.P. 7001.

For these reasons,

IT IS ORDERED that “Debtor’s Motion to Avoid Judicial Lien and Avoid Preferential Transfer” (Docket # 8), is DENIED, without prejudice.

**Signed on March 30, 2009**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**